

DISTRICT OF COLUMBIA
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DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH
Petitioner,

v.

MULTI-THERAPEUTIC SERVICES, INC.
and BENTLEY HAMILTON
Respondents.

Case No.: I-00-40124

FINAL ORDER

I. Introduction

This case arises under the Civil Infractions Act of 1985 (D.C. Code § 6-2701, et seq.) and Title 22, Chapter 35, of the District of Columbia Municipal Regulations (“DCMR”). By Notice of Infraction (00-40124) served on August 22, 2000, the Government charged Respondents Multi-Therapeutic Services, Inc. and Bentley Hamilton with violations of 22 DCMR 3501.5 (failure to comply with requirements concerning the environment and use of space) and 22 DCMR 3504.1 (failure to comply with the requirements concerning housekeeping). The Notice of Infraction was accompanied by a Statement of Deficiencies and Plan Of Correction that was issued on August 14, 2000 (the “August 14, 2000 Statement”) and on August 17, 2000 (the “August 17, 2000 Statement”). Each statement indicated a Survey Date of August 1, 2000.

The Notice of Infraction alleges that Respondents violated 22 DCMR 3501.5 at 809 49th Street, N.E. on August 1, 2000, and seeks a fine amount of \$100.00 for the alleged infraction.

See 16 DCMR 3239.3(b); 47 D.C. Reg. 6217 (August 4, 2000); 47 D.C. Reg. 5189 (June 16, 2000) (expired). The Notice of Infraction also alleges that Respondents violated 22 DCMR 3504.1 at 809 49th Street, N.E. on August 1, 2000, and seeks a fine amount of \$100.00 for the alleged infraction. See 16 DCMR 3239.3(d); 47 D.C. Reg. 6217 (August 4, 2000); 47 D.C. Reg. 5189 (June 16, 2000) (expired).

On September 13, 2000, Respondents filed a timely plea of Admit pursuant to D.C. Code § 6-2712(d) to the charge of violating 22 DCMR 3504.1. Accompanying Respondents' plea was a payment of the specified fine (by check #11149) in the amount of \$100.00. Accordingly, by order dated September 15, 2000, this administrative court closed Respondents' case with respect to the violation of 22 DCMR 3504.1.

On September 13, 2000, Respondents also filed a timely plea of Admit with Explanation pursuant to D.C. Code § 6-2712(a)(2) to the charge of violating 22 DCMR 3501.5, together with a request for a suspension or reduction of the fine. By order dated October 6, 2000, this administrative court permitted the Government to reply to Respondents' plea and request within ten (10) calendar days from the date of the order. Because this administrative court has not received a response from the Government addressing Respondents' plea and request within the time allotted, this matter is now ripe for adjudication.¹

¹ On September 28, 2000, this administrative court received the Government's List of Documents and Witnesses that it plans to submit into evidence. The September 28, 2000 submission contained a copy of the first page of the Notice of Infraction (00-40124), as well as a copy of a "Statement of Deficiencies and Plan of Correction" which has an issuance date of August 17, 2000. In addition, the September 28, 2000 submission is accompanied by an unexecuted Certificate of Service. Because the documents contained in the Government's submission are already in the record as part of the charging documents submitted under a

II. Summary of the Evidence

According to the August 17, 2000 Statement accompanying the Notice of Infraction, the Government contends that Respondents violated 22 DCMR 3501.5 by failing to keep the venetian blinds, located in the dining and sitting rooms of Respondents' facility, in good repair.² Respondents admit that they failed to comply with the requirements concerning the environment and the use of space as charged in the Notice of Infraction. Respondents assert, however, that all blinds and shades in the home were maintained in a clean and workable fashion; the blinds that were in need of repair were replaced; and the dining room blinds, although slightly dingy as compared to the newer blinds in the home, were not in disrepair, but were replaced in order to satisfy the inspection's plan of correction. Respondents also assert that the dining room blinds' operating rod had been intentionally removed by one of the facility's mentally handicapped residents. Respondents do not specifically reference the blinds in the "sitting room" which are also identified by the Government as being in "poor repair."³

Certificate of Service dated August 21, 2000, this administrative court need not reach the facial service defect presented by the September 28, 2000 submission.

2 22 DCMR 3501.5 provides: "Each window shall be supplied with curtains, shades or blinds which are kept clean and in good repair."

3 It is unclear from the record whether Respondents' facility combines the dining and sitting room areas, or they remain separate. In either case, the Government has charged a single violation of 22 DCMR 3501.5 which is to be adjudicated by this administrative court.

III. Findings of Fact

1. By their plea of Admit with Explanation to the Notice of Infraction, Respondents have admitted that they committed a violation of 22 DCMR 3501.5 on August 1, 2000.
2. On August 1, 2000, Respondents failed to supply each window with curtains, shades or blinds which are kept clean and in good repair. *See* 22 DCMR 3501.5.
3. As part of their explanation, Respondents state that the rod used to control the opening and closing of the blinds located in the dining room was intentionally removed by one of the facility's mentally handicapped residents, and those blinds were later replaced to satisfy the inspection plan of correction.

IV. Conclusions of Law

1. Respondents violated 22 DCMR 3501.5 on August 1, 2000.
2. The fine of \$100.00 sought by the Government for Respondents' violation of 22 DCMR 3501.5 will not be reduced. Despite admitting the violation of 22 DCMR 3501.5, Respondents contend that the blinds in the dining room were not in disrepair. Respondents themselves assert, however, that the rod used to control the opening and closing of the blinds was missing. Such a condition, however caused, does not constitute "good repair" for purposes of 22 DCMR 3501.5.⁴

4 Ballantine's Law Dictionary provides that the term "good repair" means "reasonable or proper repair." *Ballantine's Law Dictionary* (3rd Edition 1969). This suggests that, in order for something to be in "good repair," it should work properly. *See Cowan v. Youssef*, 687 A.2d 594,

3. Respondents have failed to accept full responsibility for their unlawful conduct, having offered that the conduct of a mentally handicapped resident is to blame for the non-compliance, rather than focusing on the adequacy of Respondents' inspections of their facility, and steps taken to improve or increase necessary monitoring.

Therefore, upon Respondents' answer and plea, its application for suspension of the penalty, and the entire record in this case, it is hereby this _____ day of _____, 2001:

ORDERED, that Respondents, who are jointly and severally liable for purposes of this adjudication, shall cause to be remitted a single payment totaling **ONE HUNDRED DOLLARS (\$100.00)** in accordance with the attached instructions within twenty (20) calendar days of the date of mailing this Order (fifteen (15) calendar days plus five (5) calendar days for service by mail pursuant to D.C. Code § 6-2715). A failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of

600 (D.C. 1996) (noting where apartment's heating and cooling system did not work "properly," apartment was not in "good repair"). Blinds that are designed to open and close, but cannot do so because of a missing control rod, do not work properly, and, therefore, are not in good repair. *Id.* In addition, courts have interpreted the term "good repair" in analogous contexts to incorporate "the element of the exercise of reasonable care for the acquiring of knowledge of defective conditions derived from a reasonable inspection." *Levine v. Union & New Haven Trust Co.*, 8 Conn. Supp. 229, 230 (Sup. Ct. 1940) (discussing duty of landlord to maintain apartment building). Had Respondents exercised such reasonable care, they more than likely would have been aware of the missing control rod prior to the Government's inspection, and replaced it accordingly. Moreover, there is nothing in the record indicating the loss of the control rod occurred very shortly before the Government's inspection.

additional sanctions, including the suspension of Respondents' licenses or permits pursuant to D.C. Code § 6-2713(f).

/s/ 3-2-01

Mark D. Poindexter
Administrative Judge